

### **REMARKS**

Claims 1-23 are currently pending in this application. Claims 2 and 13 have been amended, and new claim 23 has been added. Applicants respectfully request reconsideration in view of the above amendments and the following remarks.

#### **Applicants' Response to Objections to the Specification**

The Examiner has objected to paragraphs 18 and 31 of the Applicants' specification. In particular, the Examiner objected to paragraph 18, stating that "thermosetting resins, thermoplastics, polyethylene and polypropylene are listed as elastomeric polymers." Applicants have amended paragraph 18 herein to list thermosetting resins and thermoplastics separate from elastomeric polymers.

With respect to paragraph 31, the Examiner asserted that hydroxyl-TEMPO is an unexplained abbreviation. As suggested by the Examiner, Applicants have amended paragraph 31 herein to recite "4-hydroxy-2,2,6,6-tetramethyl-1-piperidinyloxy, free radical (hydroxyl-TEMPO)."

In view of the above, Applicants respectfully submit that the objections to the specification have been overcome.

#### **Applicants' Response to 35 U.S.C. §112, Second Paragraph Rejection**

Claims 2 and 13 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. In particular, with respect to claim 2, the Examiner asserted that polyethylene and polypropylene are not elastomeric polymers. Applicants' have amended claim 2 herein to remove polyethylene and polypropylene therefrom.

With respect to claim 13, the Examiner asserted that hydroxyl-TEMPO is an unexplained abbreviation. Applicants have amended claim 13 herein to insert the full name of

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hydroxyl-TEMPO: 4-hydroxy-2,2,6,6-tetramethyl-1-piperidinyloxy, free radical.

Therefore, Applicants respectfully submit that the Section 112 rejections have been overcome.

It is also noted that Applicants have added new claim 23. New claim 23 is directed to an asphalt composition, which is similar to claim 1, but includes a thermoplastic polymer or thermosetting resin instead of a rubber or elastomeric polymer, as recited in claim 1. The thermoplastic polymer is specified as including polyethylene or polypropylene, which were removed from claim 2, as noted above.

#### **Applicants' Response to Double Patenting Rejection**

Claims 1-22 are rejected under the doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-14 of co-pending Application No. 10/841,596. Because Application No. 10/841,596 is currently pending, this is a provisional double patenting rejection. Once one of the two respective co-pending applications is in allowable form Applicants will consider filing a terminal disclaimer, or canceling/amending claims as necessary. Applicants request the issuance of an *Ex Parte Quayle* action if this case is in all other respects found allowable.

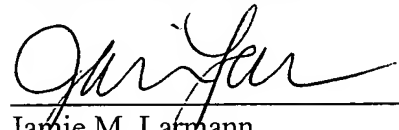
Therefore, Applicants respectfully submit that claims 1-22, as amended herein, as well as new claim 23, are patentably distinct. This application is believed to be in condition for allowance.

Favorable action thereon is therefore respectfully solicited. Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

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The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jamie M. Latmann', is written over a horizontal line.

Jamie M. Latmann  
Registration No.: 48,623  
Attorney for Applicant(s)

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700